

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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DONALD FERGUSON,

Plaintiff,

v.

DEPARTMENT OF  
CORRECTIONS,

Defendant.

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Case No. 1:06-CV-718

Hon. Richard Alan Enslen

**JUDGMENT**

This matter is before the Court after an initial Report and Recommendation of the Magistrate Judge that this matter be dismissed in accordance with the screening statute, 28 U.S.C. § 1915A. Plaintiff Donald Ferguson has responded to the Report and Recommendation by admitting that he has made a “grave mistake of law” in filing his *pro se* complaint. (Resp. 1-2.) Plaintiff further says that had he known of this mistake prior to the filing of the Report, he would have filed a motion to voluntarily dismiss his complaint. Plaintiff asks in the Response that the Court not count this dismissal as a “strike” pursuant to 28 U.S.C. § 1915(g).

Plaintiff’s request is reasonable given that Plaintiff has voluntarily recognized, at an early stage of the proceedings, the lack of merit of his papers. This request, while some might oppose it as contrary to the counting mechanism of section 1915(g), is also consistent with the liberal construction of pleadings to be accorded under the Federal Rules of Civil Procedure and *Haines v. Kerner*, 404 U.S. 519, 519-20 (1972). It is further supported by the Court’s inherent authority to order matters *nunc pro tunc*, to afford justice to litigants, and to exercise authority to encourage the expeditious resolution of suits.

**THEREFORE, IT IS HEREBY ORDERED** that the Report and Recommendation (Dkt. No. 9) is **REJECTED** as unnecessary.

**IT IS FURTHER ORDERED** that Plaintiff's request to voluntarily dismiss this suit contained in his Response (Dkt. No. 13) is **GRANTED** pursuant to Federal Rule of Civil Procedure 41 and this suit is **DISMISSED WITHOUT PREJUDICE**.

**IT IS FURTHER ORDERED** that this dismissal **DOES NOT** qualify as a dismissal "on the grounds that [the suit] is frivolous, malicious or fails to state a claim for which relief may be granted" within the meaning of 28 U.S.C. § 1915(g).

Dated in Kalamazoo, MI:  
February 16, 2007

/s/Richard Alan Enslen  
Richard Alan Enslen  
Senior United States District Judge